

Internal Revenue Service

Department of the Treasury
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LEGEND:

X =

A =

B =

C =

State =

Date =

1

Date =

2

Dear

This responds to a letter dated July 21, 2011, and subsequent information, submitted on behalf of X by its authorized representative, requesting a ruling under § 1361(b)(1)(D) of the Internal Revenue Code.

The information submitted states that X was incorporated in State and elected to be treated as an S corporation on Date 2. X has one class of stock outstanding and all shares of X stock have identical voting, distribution and liquidation rights. As of Date 1, X's shareholders included A, B and C.

X entered into separate redemption agreements with both B and C to purchase and redeem all of their outstanding shares of X effective Date 1. Both redemption agreements include a provision that the price to be paid to B and C for their shares of X will be adjusted such that B and C will receive additional payments if X engages in certain sales transactions specified in the agreement.

X represents that the redemption agreements are not designed or intended to circumvent or otherwise violate the second class of stock rule of § 1.1361-1(l)(2)(iii)(A). X also represents that the redemption agreements do not establish a purchase price for the stock that, at the time of the redemption agreements were entered into, will be significantly in excess of or below the fair market value of the stock.

Section 1361(b)(1) defines the term “small business corporation” as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in § 1361(c)(2)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1.1361-1(l)(1) provides that, except as provided in § 1.1361-1(l)(4) (relating to instruments, obligations, or arrangements treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(iii)(A) provides, in part, that redemption agreements are disregarded in determining whether a corporation’s outstanding shares of stock confer identical distribution and liquidation rights unless (1) a principal purpose of the agreement is to circumvent the one class of stock requirement of § 1361(b)(1)(D) and § 1.1361-1(l), and (2) the agreement establishes a purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock. Agreements that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are not considered to establish a price that is significantly in excess of or below the fair market value of the stock and, thus, are disregarded in determining whether the outstanding shares of stock confer identical rights.

Based solely on the facts submitted and the representations made, we conclude that the redemption agreement described above and executed on Date 1 will not be treated as a second class of stock within the meaning of § 1361(b)(1)(D), and will be disregarded in determining whether the outstanding shares of X stock confer identical rights.

Except as specifically set forth above, we express or imply no opinion as to the federal tax consequences of the above facts under any other provision of the Code.

Specifically, we express or imply no opinion concerning whether X's S corporation election is valid under § 1362.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: